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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,522	05/20/2002	Juergen Heymann	07781.0042	4073
32864	7590	06/20/2006	EXAMINER	
FISH & RICHARDSON, P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			BHATIA, AJAY M	
			ART UNIT	PAPER NUMBER
			2145	

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/049,522

Applicant(s)

HEYMANN ET AL.

Examiner

Ajay M. Bhatia

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Applicant's arguments filed 5/02/06 have been fully considered but they are not persuasive.

Applicant presently one main argument " In fact Brandt neither teacher nor suggest the recited "predetermined close instruction" which carries "the identifier." Brandt discloses a DISCONNECT API which is a disconnect mechanism (and not a instruction) that is used to allow a software application to suspend a process while the ..." Presently applicant has not argued how this differs from de-allocating resources, Examiner has reviewed applicant specification and it does not provided any definition differs from that which is currently taught in Brandt. And applicant has not stated any information in the remark, just merely repeats that claim limitation stating that Brandt does not teach claim 1 which not explanation of how the present claim differs from the cited prior art therefore examiner is not persuaded. Examiner disagrees, on page 11 lines 31-73, Brandt discuss that the API is implemented in a software application, then starting on line 46 Brandt discuss a example of the implementation of the system. Therefore the examiner is not persuaded that Brandt does not anticipated the presently claimed invention.

Additionally applicants amendment to include medium, fails to overcome the 101 rejection. The specification defines a medium as including paper, which would fail to produce a tangible result.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 27-32 and 37 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Presently the claims include the term medium, as defined by the specification this includes paper as a medium. Computer code contained on paper fails to produce a tangible result.

In *State Street*, the Federal Circuit examined some of its prior section 101 cases, observing that the claimed inventions in those cases were each for a “practical application of an abstract idea” because the elements of the invention operated to produce a “useful, concrete and tangible result.” *State Street*, 149 F.3d at 1373-74, 47 USPQ2d at 1601-02. For example, the court in *State Street* noted that the claimed invention in *Alappat* “constituted a practical application of an abstract idea (a mathematical algorithm, formula, or calculation), because it produced ‘a useful, concrete and tangible result’—the smooth waveform.” *Id.* Similarly, the claimed invention in *Arrhythmia* “constituted a practical application of an abstract idea (a mathematical algorithm, formula, or calculation), because it corresponded to a useful, concrete and tangible thing—the condition of a patient’s heart.” *Id.*

In determining whether the claim is for a “practical application,” the focus is not on whether the steps taken to achieve a particular result are useful, tangible and concrete, but rather that the final result is “useful, tangible and concrete.” The Federal

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Circuit further ruled that it is of little relevance whether a claim is directed to a machine or process for the purpose of a § 101 analysis. AT&T, 172 F.3d at 1358, 50 USPQ2d at 1451.

A claim limited to a machine or manufacture, which has a practical application, is statutory. In most cases, a claim to a specific machine or manufacture will have a practical application. See Alappat, 33 F.3d at 1544, 31 USPQ2d at 1557 ("the claimed invention as a whole is directed to a combination of interrelated elements which combine to form a machine for converting discrete waveform data samples into anti-aliased pixel illumination intensity data to be displayed on a display means. This is not a disembodied mathematical concept which may be characterized as an 'abstract idea,' but rather a specific machine to produce a useful, concrete, and tangible

result."); and State Street, 149 F.3d at 1373-74, 47 USPQ2d at 1601-02 ("the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price, constitutes a practical application of a mathematical algorithm, formula, or calculation, because it produces 'a useful, concrete and tangible result' – a final share price momentarily fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades."). Also see AT&T, 172 F.3d at 1358, 50 USPQ2d at 1452 (Claims drawn to a long-distance telephone billing process containing mathematical algorithms were held patentable subject matter because the process used the algorithm to produce a useful, concrete, tangible result without preempting other uses of the mathematical principle.).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Brandt (U.S. Patent 5,892,905).

For claim 20, Brandt teaches, a method for communication between a client computer and a server computer, both computers using the hypertext transfer protocol (HTTP), the client computer using an HTTP-browser, the method comprising the following steps: sending a first request from the client computer to the server computer; upon receiving the first request, the server computer, (i) allocating a resource at the server computer, the resource with an identifier, and (ii) returning a predetermined close instruction to the browser, the close instruction carrying the identifier; upon unloading the close instruction from the browser of the client computer, sending a second request from the client computer to the server computer, the second request carrying the identifier and indicating to de-allocate the resource; and upon receiving the second request from the client computer, by the server computer de-allocating the resource. (de-allocation is interpreted as deleting, removing from use

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temporally or permanently, re-assigning, or temporally removing the use of) (see Brandt, Col. 5 lines 5-67, Col. 8 lines 31-39, Col. 11 lines 15-24, Col. 17 lines 6-24)

For claim 21, Brandt teaches, the method of claim 20, wherein after the server computer has returned the predetermined close instruction, and before the server computer receives the second request from the client computer, the server computer consecutively sends content pages to the client computer. (see Brandt, Col. 17 lines 25-45)

For claim 22, Brandt teaches, the method of claim 21, wherein in the step returning a predetermined close instruction, the browser presents the close instruction in a first frame and presents the content pages in a second frame. (see Brandt, Col. 18 lines 38-45, it is inherent feature of a browser to display content in any of a multiple frames)

For claim 23, Brandt teaches, the method of claim 21, wherein the close instruction prevents selected content pages from being cached by the browser. (see Brandt, Col. 18 lines 38-45, a inherent feature of purging cached files is nothing is able to be cached)

For claim 24, Brandt teaches, the method of claim 20, wherein in the step sending a second request, the client computer sends the second request to a predetermined

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address of the server computer. (see Brandt, Col. 7 lines 55-60, it is necessary to know the address of a device to communicate with it in a network)

For claim 25, Brandt teaches, the method of claim 20, wherein in the step returning a predetermined close instruction, the predetermined close instruction comprises script. (see Brandt, Col. 28 lines 33-56)

For claim 26, Brandt teaches, the method of claim 20, wherein in the step returning a predetermined close instruction, the script does not lead to a presentation by the browser. (see Brandt, Col. 18 lines 38-45, close of an applicant inherently prevents communication with the application and display of any information)

Claims 27-35 list all the same elements of claims 20-26, but in product, medium and system form rather than method form. Therefore, the supporting rationale of the rejection to claim 20-26 applies equally as well to claims 27-35.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brandt in view of Special Edition Using Windows with 95 Internet Explorer 4.0 (referred to as Windows).

For claim 36, Brandt teaches, a method for communication between a client computer and a server computer, both computers using the hypertext transfer protocol (HTTP), the client computer using an HTTP-browser, the method comprising the following steps: sending a request from the client computer to the server computer; upon receiving the request, the server computer: allocating a resource at the server computer, the resource with an identifier, returning a close instruction to the client computer, the close instruction and the identifier, upon receiving the close instruction, the client computer (see Brandt, Col. 5 lines 5-67, Col. 8 lines 31-39, Col. 11 lines 15-24, Col. 17 lines 6-24)

Brandt fails to clearly disclose, time-out period (T), with the time-out period (T), measuring the time (t) during that communication between the client computer and the server computer is idle, and de-allocating the resource when the measured time (t) reaches the time-out period (T); and measuring the time (t) during that the communication between the client computer and the server computer is idle, displaying a warning to the user if the measured time (t) reaches a predetermined fraction ($\lceil \text{fraction } (T/X) \rceil$) of the time-out period (T).

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Windows teaches, time-out period (T), with the time-out period (T), measuring the time (t) during that communication between the client computer and the server computer is idle, and de-allocating the resource when the measured time (t) reaches the time-out period (T); and measuring the time (t) during that the communication between the client computer and the server computer is idle, displaying a warning to the user if the measured time (t) reaches a predetermined fraction ($\lceil \text{fraction } (T/X) \rceil$) of the time-out period (T). (T/X is defined as anytime before the connection fully times-out a de-allocation takes place) (see Windows, see cited page from chapter 17)

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the system of Brandt and the Window's method of giving a warning and disconnecting, because it is well known in the art at the time of the invention that using features that integrate of the Operating System reduces the amount of development and design to create system that operate on that operating system. (see Brandt, Col. 1 lines 45-56 and Col. 3 lines 35-40)

Claim 37 list all the same elements of claim 36, but in system form rather than method form. Therefore, the supporting rationale of the rejection to claim 36 applies equally as well to claim 37.

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For claim 38, Brandt-Windows teaches, a method for communication between a client computer and a server computer, both computers using the hypertext transfer protocol (HTTP), the client computer using an HTTP-browser;

the method comprising the following steps:

sending a first request from the client computer to the server computer;

allocating a resource at the server computer, the resource with an identifier;

returning a predetermined response page to the browser, the response page carrying the identifier and carrying browser instructions;

as instructed by the response page, periodically sending the second requests by the browser to the server computer, the second requests carrying the identifier; and

at the server computer, periodically checking the arrival of the second requests with the identifier from the client computer and de-allocating the resource in case a

predetermined time period (T) has lapsed since the last arrival. (see Brandt, Col. 5 lines 5-67, Col. 8 lines 31-39, Col. 11 lines 15-24, Col. 17 lines 6-24) and (see Windows, see cited page from chapter 17) The same motivation that was utilized in the rejection of claim 17, applies equally as well to claim 19.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay M. Bhatia whose telephone number is (571)-272-3906. The examiner can normally be reached on M-F 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571)272-3933. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jason Cardone
Supervisor Patent Examiner
Art Unit 2145

AB